

State Board of Equalization

OPERATIONS MEMO

For Public Release

No : 1152

Date: February 6, 2008

SUBJECT: Security Requirements for Cigarette Distributors

I. GENERAL

Revenue and Taxation Code section 30141 requires every cigarette and/or tobacco products distributor to furnish mandatory security in the amount and form as prescribed by the Board of Equalization (BOE). Pursuant to 30142 (a), the minimum amount of mandatory security for any cigarette and tobacco product distributor is one thousand dollars (\$1,000). Mandatory security shall be released in a timely manner if the distributor's account(s) is in good standing with the BOE upon completion of the close out review.

Additionally, pursuant to Revenue and Taxation Code section 30142 (b), a licensed cigarette distributor may furnish security for the purpose of deferring payments of cigarette tax stamps or meter register settings. Distributors have several options for deferred payments and security requirements. A distributor may request deferred payments for cigarettes tax stamps by completing form BOE-356 *Cigarette Distributor's Application for Deferred Payment Option*. Upon receipt of the request, the Excise Taxes Division will determine the cigarette distributor's security requirement and deferred purchase credit limit.

II. SECURITY REQUIREMENTS FOR DEFERRED PAYMENT OF CIGARETTE TAX STAMPS

Monthly Deferred Payment: If a licensed cigarette distributor elects to make payments for stamps or meter register settings on a monthly basis, the BOE shall require security equal to not less than 70 percent of the amount and no more than twice the amount, as fixed by the BOE, of the distributor's purchases of stamps and meter register settings for which payment may be deferred. The distributor will be required to remit the payment on or before the 25th day of the month following the month in which the stamps were purchased.

Twice Monthly Deferred Payment: If a licensed cigarette distributor elects to make payments for stamps or meter register settings on a twice-monthly basis, the BOE shall require security equal to not less than 50 percent of the amount and no more than twice the amount, as fixed by the BOE, of the distributor's purchases of stamps and meter register settings for which payment may be deferred.

The distributor shall make two remittances during the month following the month in which the stamps and meter register settings were purchased. The first monthly remittance shall be made on or before the 5th day of the month and shall be equal to either one-half of the total amount of those purchases of stamps and meter register settings that were made during the preceding month or the total amount of those purchases of stamps and meter register settings that were made between the first day and the 15th day of the preceding month, whichever is greater. The second monthly remittance shall be made on or before the 25th day of the month for the remainder of those purchases of stamps and meter register settings that were made in the preceding month.

Weekly Deferred Payment with Security: If a licensed cigarette distributor elects to make payments for stamps or meter register settings on a weekly basis, the BOE shall require security equal to not less than 25 percent of the amount and no more than twice the amount, as fixed by the BOE, of the distributor's purchases of stamps and meter register settings for which payment may be deferred.

The distributor will be:

1. Required to remit the payment on or before Wednesday following the week in which the stamps and meter register settings were purchased.
2. Required to provide to the BOE and update, as necessary, an electronic mail address for the purpose of receiving payment information, including, but not limited to, amounts owing for stamps and meter register settings purchased.

Weekly Deferred Payments with No Additional Security: Pursuant to Revenue and Taxation Code section 30142 (d), a licensed cigarette distributor may elect to defer payments for stamps or meter register settings purchases without posting additional security if the distributor's average monthly purchase of stamps for the previous 12 months does not exceed seventy-two thousand (72,000) stamps or meter register settings, and the distributor meets all of the following requirements:

1. has been licensed under this part for a minimum of five years;
2. has not been delinquent in the filing of any reports or returns required under this part for the preceding three consecutive years;
3. has not been delinquent in the payment of any tax under the Cigarette and Tobacco Products Tax Law, or for any other tax or fee administered or collected by the BOE, for the preceding three consecutive years;
4. provides to the BOE and updates, as necessary, an electronic mail address for the purpose of receiving payment information, including, but not limited to, amounts owing for stamps and meter register settings purchased;
5. Any other criteria the BOE may require.

The distributor will be required to remit payment for stamps purchased on the deferred-payment basis without additional security on or before Wednesday following the week in which the stamps were purchased.

III. ACCEPTABLE TYPES OF SECURITY

Currently, there are four types of acceptable security for purposes of complying with the mandatory security requirements for cigarette and tobacco products distributors and deferred payment security requirements for cigarette tax stamps. Those acceptable types of security are:

1. Cash Deposits
2. Deposits in banks, savings banks, and savings and loans including Insured Accounts, Fully Paid Investment Certificates, Bonus Investment Certificates and Accumulative Investment Certificates
3. State and Federal Credit Union Shares
4. Surety Bonds

Effective February 4, 2008, a Letter of Credit has been approved as a new form of security for use by licensed cigarette distributors. A Letter of Credit is a binding document that a cigarette distributor can request from his/her bank in order to guarantee payment. For deferred purchases of cigarette tax stamps, a Letter of Credit gives the BOE assurance that payment will be received for the cigarette tax stamps purchased on credit by the cigarette distributor. The use of a Letter of Credit as a form of security for cigarette tax stamp purchases shall be at the discretion of the Excise Taxes Division.

IV. GUIDELINES FOR ACCEPTING A LETTER OF CREDIT

A licensed cigarette distributor must have their bank or financial institution complete and sign a form BOE-487-DCB *Irrevocable Letter of Credit* (Exhibit 1.) The Letter of Credit must be issued by any of the following:

1. A State of California chartered bank or savings institution;
2. A federally chartered bank or savings institution;
3. Any other foreign or domestic bank or savings institution;
4. A group (syndication) of domestic or foreign bank or savings institutions.

The Letter of Credit must be issued by and payable at a branch in the continental United States, Alaska, or Hawaii. The issuing branch or savings institution, in any event, shall have at the time of issuance of the Letter of Credit an acceptable credit rating as set forth below:

An "Aaa," "Aa", or "A" long term bank deposit rating for the bank or savings institution in the current monthly edition of *Moody's Bank Credit Research Monthly Ratings List*.

The Excise Taxes Division will periodically verify that a bank's or savings institutions' long term bank deposit rating is acceptable. If a bank's or savings institution's rating subsequent to the issuance of the Letter of Credit falls below the acceptable rating level, the BOE shall require the Letter of Credit to be replaced by a bank with an acceptable rating within 45 days of the publication of the lower credit rating.

V. PROCESSING A LETTER OF CREDIT

Upon receipt of the form BOE-487-DCB, *Irrevocable Letter of Credit*, Excise Taxes Division staff shall verify that the credit rating of the bank or savings institution meets the criteria set forth in section IV, *Guidelines for Accepting a Letter of Credit*. Staff can verify long term bank deposit ratings by visiting www.moody.com and viewing the current monthly edition of *Moody's Bank Credit Research Monthly Ratings List* prepared by Moody's Investor Service, Inc., New York.

Upon review and approval of the Letter of Credit by the Excise Taxes Division, the security will be posted by using a "D" in the security type field in the SEC PO screen. To add the bank or savings institution information, press F9 while in the 'Guarantor ID and Name' field on the SEC PO screen and select the bank or savings institution from the list. If the bank or savings institution is not listed, it may be added to the list by contacting Local Revenue and Allocation Section, Sales and Use Tax Department.

VI. OBSOLESCENCE

This operations memo will become obsolete when this information is incorporated into Chapter 4 of the Compliance Policy and Procedures Manual.

David J. Gau
Deputy Director
Property and Special Taxes Department

Distribution: 1-D

Attachment:

Exhibit 1- BOE-487-DCB, *Irrevocable Letter of Credit*, (via internet at <http://www.boe.ca.gov/pdf/boe487dcb.pdf>)